

### **REMARKS**

This responds to the Final Office Action dated May 13, 2010.

Claim 1, 9, 11, 22, and 29 are amended, no claims are canceled, and no claims are added; as a result, claims 1, 9-19, and 15-32 remain pending in this application.

#### **The Rejection of Claims Under § 102**

Claims 1, 9, 21-22 and 28-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Philyaw et al USPN (6098106).

#### **Observations with respect to the “Response to Arguments” section**

In the “Response to Arguments” section, the Examiner states that “[t]he message transmitted to the ARS is a portion of the audio signal (content item) that contains information derived from the audio signal 111”<sup>1</sup> and refers to Philyaw at column 6, lines 37-44. Applicants respectfully submit that, contrary to the Examiner’s assertion, including information derived from the audio signal into a message packet does not make that message packet into a portion of an audio signal.

Also in the “Response to Arguments” section, the Examiner refers to description of FIG. 6 Philyaw at column 8, lines 23-43, which is reproduced below.

Referring now to FIG. 6, there is illustrated a flowchart of the process the ARS 308 may undergo when receiving the message packet 400 from the source PC 302... Upon receipt of the *message packet 400*, in function block 602, the ARS 308 decodes the message packet 400... In function block 606, the product code is then used with a look-up table to *retrieve the advertiser server 312 URL of the respective product information contained in the audio signal data*. In function block 608, the ARS 308 then assembles message packet 402 for transmission back to the source PC 302. Function block 610 indicates the process of sending the message packet 402 back to the source PC 302 over Path “B.”<sup>2</sup>

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<sup>1</sup> Final Office Action, page 2.

<sup>2</sup> Philyaw, [8: 23-43].

The Examiner then states the following: “[i]n other words the message received at the ARS server 302 includes audio signal data that is then routed back to source PC 302 and is played on client PC 302.”<sup>3</sup> Applicants respectfully submit that, contrary to the Examiner’s assertion, the reference to “audio signal data” in the passage above is made with respect to the audio signal received at the source PC from the television receiver and not with respect to the message packet 400. A product code included into a field of the message packet 400 is not audio signal data, even if the product code is derived from an audio signal. Furthermore, there is no support in Philyaw for the Examiner’s assertion that the message received at the ARS server 302 is routed back to source PC 302 and is played on client PC 302. As is evident from the passage reproduced above, ARS does not send the received message back to the source PC, but rather assembles a different message packet for transmission to the source PC. This difference is evident from FIG. 4a in Philyaw that shows the message packet 400 received at ARS and FIG. 4b in Philyaw that shows the message packet 402 transmitted from ARS. There is also no evidence that either the message packet 400 or the message packet 402 in Philyaw is played on the source PC 302 and therefore there is no support in Philyaw for the Examiner’s assertion that a message that is routed back to the source PC “is played on client PC 302.”

Further in the “Response to Arguments” section, the Examiner clarifies his position that because a product code field in the message packet 400 in Philyaw may include other information instead of the product code, the message 400 may be regarded as “not accompanied by an identifier suitable for interrogating a database...”<sup>4</sup> Yet, in discussing the operation of processing the received portion of the content item to determine such identifier recited in claim 1, the Examiner relies<sup>5</sup> on the passage in Philyaw that describes the presence of the product code in the message 400. Thus, if the Examiner correlates message packet 400 that has information other than the product code in the product code field with “the portion of the content item ... not accompanied by an identifier suitable for interrogating a database,” the Examiner has to show that Philyaw discloses that such message packet without the product code can be processed to determine such identifier in order to interrogate a database with it. Applicants submit that the

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<sup>3</sup> Final Office Action, page 3.

<sup>4</sup> Final Office Action, page 4.

<sup>5</sup> Final Office Action, page 6.

Examiner cannot cite a message packet *without* the product code to show the portion of the content item “not accompanied by an identifier suitable for interrogating a database...” recited in claim 1 but then cite the message packet *with* the product code to show the same portion of the content item in the “processing” operation of claim 1.

Previously presented argument

Stated generally, Philyaw is not concerned with enhancing the rendering of content items. Philyaw proposes communicating, to the viewer's computer, advertiser information within the audio signal. This advertiser information is extracted from the audio signal at the viewer's computer and transmitted to a reference server that maintains a database of product codes and the associated addresses of respective advertiser servers. The advertiser information that is extracted from the audio signal at the viewer's computer is transmitted to a reference server in the form of a message packet that contains the URL of the reference server and the product code. The product code is used at the reference server for interrogating a database to determine the address of the advertiser server that stores information about the product.<sup>6</sup>

The Office Action cites the message packet (that contains the URL of the reference server and the product code) to show “a portion of the content item” recited in claim 1. Claim 1 requires that “a portion of the content item” is (1) received at a server system from a client system, (2) can be played by the client system, and (3) is not accompanied by an identifier suitable for interrogating a database to determine further information associated with the content item.<sup>7</sup>

With respect to the requirement that “a portion of the content item” recited in claim 1 can be played by the client system, it has already been pointed out in the previous communication that a message packet shown in Figure 4a in Philyaw does not include any media objects or portions of media objects in general or any content that can be played by a client system. In the “Response to Arguments” section of the Office Action, the Examiner refers to the use of tones

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<sup>6</sup> Philyaw, Figures 2, 3, 4a; 5: 8 - 7:12.

<sup>7</sup> These requirements are expressed by the limitations “receiving, at a server system, a portion of the content item that can be played by a client system from the client system” and “determining that the portion of the content item is not accompanied by an identifier suitable for interrogating a database to determine further information associated with the content item” recited in claim 1.

embedded within a program audio signal for controlling a user's computer<sup>8</sup> to counter the Applicants' assertion that the control signal in Philyaw cannot be regarded as a content item that can be played by the client's computer. The tones embedded within audio signals mentioned in Philyaw are not received at the reference server (correlated by the Examiner with "a server system" recited in claim 1) but rather are used for controlling *a user's computer*. It is respectfully submitted that *information embedded in an audio signal that is sent to the client is not the same as a message that is sent from the client to the reference server and that is not embedded in an audio signal*. Therefore, the reference to "tones" in Philyaw does not indicate in any way that a message packet illustrated in Fig. 4a (correlated by the Examiner with "a portion of the content item" recited in claim 1) is audio content or any other type of content that can be played by a client system.

With respect to the requirement that "a portion of the content item" recited in claim 1 is not accompanied by an identifier suitable for interrogating a database, it has already been pointed out in the previous communications that the message received at the reference server in Philyaw contains advertiser product information (the product code) that is used to interrogate the database in order to determine the URL of the relevant advertiser server. A message that contains a product code that is used for interrogating a database is distinct from a content item that "is not accompanied by an identifier suitable for interrogating a database." In the "Response to arguments" section, on page 4 of the Detailed Description, the Office Action states that a message in Philyaw includes several fields, some of which are not used for interrogating product information in a database. While not every field in a message in Philyaw is used for interrogating a product information in a database, the fact that at least one field in the message contains an identifier that is used to interrogate the database means that Philyaw fails to disclose "the portion of the content item [that is received at the server system and that] is not accompanied by an identifier suitable for interrogating a database."

Because in Philyaw the message received at the reference server from a viewer's computer (1) cannot be played by a client system and (2) is accompanied the product code that is then used to interrogate a database, Philyaw fails to disclose "receiving, at a server system, a

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<sup>8</sup> Philyaw, 4: 55-65.

portion of the content item that can be played by a client system from the client system” and “the portion of the content item is not accompanied by an identifier suitable for interrogating a database to determine further information associated with the content item” recited in claim 1. Claim 1 and its dependent claims are thus patentable in view of Philyaw and should be allowed.

With respect to new claims 30 and 31, Philyaw does not contemplate receiving, at a reference server, a portion of a content item that can be played at the client system in general or receiving a portion of video or audio content in particular. While the advertiser information in Philyaw is extracted from an audio signal at the viewer’s computer, there is no indication that the message packet that is used to send the extracted information to the reference server includes audio or video content or is send with an audio signal. Therefore, the new claims are patentable in view of Philyaw and should be allowed.

Claims 9, 22, and their respective dependent claims are patentable in view of Philyaw for at least the reasons articulated with respect to claim 1. It is respectfully requested that the rejections be withdrawn.

With respect to claim 29, the Examiner asserts that Philyaw discloses “detecting an indication of a user interest in a content item that can be played by a client system” and “responding to the indication by obtaining a portion of the content item from the client system, the portion of the content item being distinct from an identifier associated with the content item.” While the Examiner correlated the message packet (illustrated in Figure 4a in Philyaw) to show “a portion of the content item,” it is not clear what element of Philyaw is being regarded to correspond to “a content item that can be played by a client system,” of which the message packet is a portion. It is respectfully requested that the Examiner explains which element of Philyaw is being regarded as corresponding to “*a content item*” recited in claim 29.

It is respectfully requested that the Examiner explains which element of Philyaw is being regarded as corresponding to “*an indication of a user interest in a content item that can be played by a client system.*”

It is respectfully requested that the Examiner explain which operation in Philyaw is being regarded as corresponding to the “*detecting*” of an indication of a user interest in a content item that can be played by a client system.

In Philyaw, a message packet (correlated by the Examiner with “a portion of the content item”) is sent to the reference server from a viewer’s computer. There is no indication that the reference server *responds to an indication of a user interest in a content item by obtaining the message packet*.

Because Philyaw fails to disclose all elements of claim 29, claim 29 is patentable in view of Philyaw and should be allowed.

Claims 1, 9, and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Conwell et al USPN (6970886).

Conwell describes a method where a user of an audio file can utilize an identifier to query a database and obtain the URL of resources associated with that content.<sup>9</sup> Conwell describes that a consumer uses a personal computer or a wireless Internet appliance to decode an identifier from audio content and send the identifier to a Registry database, where each record includes an identifier and a corresponding URL. Conwell provides an example where an audio file does not have an affirmatively assigned identifier and where a compliant player processes the audio file data to derive an identifier.<sup>10</sup>

The Examiner cites a method where an identifier is sent to the registry database (correlated with a server system of claim 1 by the Examiner) to show elements of a method where a portion of a content item without an identifier is received at a server system so that the server system has to process the received content in order to obtain an identifier. Receiving, at a registry database, *an identifier* for an audio file that was sent from a consumer’s device is not the same as an operation where a server system receives *a portion of a content item that is distinct from an identifier associated with the content item*. Thus, Conwell fails to disclose “receiving, at a server system, a portion of the content item that can be played by a client system from the

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<sup>9</sup> Conwell, Abstract.

<sup>10</sup> Conwell, 3:43 – 4: 13.

client system, the received portion of the content item being distinct from an identifier associated with the content item," as recited in claim 1. In view of the description provided in Conwell, where no portion of an audio file is ever sent to a server where the operation of deriving an identifier from an audio file is never performed at the server, other limitations of claim 1 are also missing from Conwell. Because Conwell does not disclose all features of claim 1, claim 1 and its dependent claims are patentable and should be allowed. It is respectfully requested that the rejection be withdrawn.

Claims 9, 22, and their respective dependent claims are patentable in view of Conwell for at least the reasons articulated with respect to claim 1. It is respectfully requested that the rejections be withdrawn.

§ 103 Rejection of the Claims

Claims 10 and 15-19, and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Philyaw et al, USPN (6098106) in view of Herz et al USPN. (20010014868).

Claims 15-19 include the feature of " the portion of the content item is not accompanied by an identifier suitable for interrogating a database to determine further information associated with the content item" by virtue of their being dependent on claim 1. Hertz, related to system for the automatic determination of customized prices and promotions (Hertz, Title), whether considered separately or in combination with Philyaw, fails to disclose or suggest this feature. Thus, claims 15-19 are patentable in view of the Philyaw and Hertz combination and should be allowed.

Claims 10 and 23-26 require "the portion of the content item is not accompanied by an identifier suitable for interrogating a database to determine further information associated with the content item" by virtue of their being dependent on claim 9. Hertz, whether considered separately or in combination with Philyaw, fails to disclose or suggest this feature. Thus, claims 10 and 23-26 are patentable in view of the Philyaw and Hertz combination and should be allowed.

Claims 11-12 were rejected under 35 U.S.C. § 103(a) as being obvious over Philyaw et al. (U.S. Patent No. 6,098,106) in view of Levy (U.S. Patent No. 6,505,160) and further in view of Herz et al. (U.S. Patent Application Publication No. 2001/0014868).

Claim 11 recites " the media object is not accompanied by an identifier suitable for interrogating a database to determine further information associated with the media object." As discussed above, in Philyaw, the message received at a reference server is accompanied by the product code that is then used to interrogate a database. Thus, Philyaw fails to disclose this feature recited in claim 11. Levy discusses transforming media objects into active, connected objects via identifiers embedded into them or their containers (Levy, Abstract) whether considered separately or in combination with Philyaw, does not remedy this deficiency of Philyaw. Hertz, related to system for the automatic determination of customized prices and promotions (Hertz, Title), whether considered separately or in combination with Philyaw and Levy also fails to disclose or suggest this feature. Because Philyaw/Levy/Hertz combination fails to disclose or suggest all features of claim 11, claim 11 and its dependent claim 12 are patentable in view of Philyaw/Levy/Hertz combination and should be allowed.

Claims 20 and 27 were rejected under 35 U.S.C. § 103(a) as being obvious over Philyaw et al. (U.S. Patent No. 6,098,106) in view of Herz et al. (U.S. Patent Application Publication No. 2001/0014868).

Claim 20 includes the feature of "the portion of the content item is not accompanied by an identifier suitable for interrogating a database to determine further information associated with the content item" by virtue of its being dependent on claim 1. Herz, whether considered separately or in combination with Philyaw, fails to disclose or suggest this feature. Thus, claim 20 is patentable in view of the Philyaw and Herz combination and should be allowed.

Claim 27 requires "the portion of the content item is not accompanied by an identifier suitable for interrogating a database to determine further information associated with the content item" by virtue of its being dependent on claim 9. Herz, whether considered separately or in combination with Philyaw, fails to disclose or suggest this feature. Thus, claim 27 is patentable in view of the Philyaw and Herz combination and should be allowed.



**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (408) 278-4052 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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